

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WILLIAM PARKER,)	
)	
Plaintiff,)	Hon. J. Nicholas Ranjan
)	
v.)	2:23-cv-2102-NR
)	
EDWARD GAINY, et al.,)	JURY TRIAL DEMANDED
)	
Defendants.)	

**DEFENDANT EDWARD GAINY'S MOTION TO DISMISS PLAINTIFF'S
SECOND AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendant Edward Gainey (“Mayor Gainey”) respectfully submits this Motion to Dismiss all claims filed against him by Plaintiff William Parker (“Mr. Parker”) in his Second Amended Complaint at ECF No. 43.

1. Mr. Parker filed the instant action against Mayor Gainey and other defendants alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. ECF No. 1.

2. On September 24, 2024, Mr. Parker filed a Second Amended Complaint setting forth the following constitutional claims against Mayor Gainey: (1) Fourth Amendment malicious prosecution; (2) First Amendment retaliation; and (3) civil conspiracy. ECF No. 43, generally.

3. All of Mr. Parker’s claims against Mayor Gainey must be dismissed for failure to state a claim upon which relief can be granted.

4. As a threshold and dispositive matter, Mr. Parker fails to adequately plead that Mayor Gainey was personally involved in any of the constitutional violations he alleges.

5. However, even if Mr. Parker has adequately pleaded Mayor Gainey's personal involvement in a constitutional violation, his claims nonetheless fail as a matter of law.

6. First, Mr. Parker fails to show that Mayor Gainey "initiated criminal proceedings" against him, which is required to state a claim for malicious prosecution.

7. The facts in Mr. Parker's Second Amended Complaint and the exhibit attached to it show that Defendant Kerry Ford ("Detective Ford") initiated the criminal proceedings against Mr. Parker. *Harvard v. Cesnalis*, 973 F.3d 190, 205 n.7 (3d Cir. 2020).

8. The Second Amended Complaint is devoid of any allegations that Mayor Gainey participated in or otherwise influenced the initiation of criminal proceedings against Mr. Parker.

9. Second, Mr. Parker fails to plead facts showing that Mayor Gainey engaged in any of the alleged retaliatory acts described in Mr. Parker's Second Amended Complaint.

10. Third and finally, Mr. Parker fails to state a claim for civil conspiracy against Mayor Gainey under Section 1983 and 1985.

11. Mr. Parker does not plead sufficient facts to show that Mayor Gainey conspired with co-defendants to deprive Mr. Parker of any constitutional rights or that any alleged conspiracy was based on Mr. Parker's race or class.

12. For these reasons, Mayor Gainey respectfully requests that this Court dismiss all claims against him in Mr. Parker's Second Amended Complaint, as explained in further detail in his brief accompanying this motion.

13. A proposed order is attached.

Respectfully submitted,

KRYSIA KUBIAK
City Solicitor

/s/ Hillary M. Weaver
Hillary M. Weaver, Esquire
Assistant City Solicitor
PA I.D. No. 322545
City of Pittsburgh Department of Law
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219
(412) 255-2014
hillary.weaver@pittsburghpa.gov
Counsel for Defendant Edward Gainey